

**DEPARTMENT OF STATE REVENUE  
REVENUE RULING #IT 96-01**

February 13, 1997

**NOTICE:** Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE I: Gross Income Tax -- Consolidated Filing**

Authority: IC 6-2.1-4-6(a), (b), and (c); IC 6-2.1-5-5(a), (b), and (d).

**ISSUE II: Gross Income Tax -- Nonresidents**

Authority: IC 6-2.1-2-2; Rule 45 IAC 1-1-119; Rule 45 IAC 1-1-120; Dept. of State Revenue v. Mercantile Mortgage Co., 412 N.E.2d 1252 (Ind. App. 1980)

**ISSUE III: Gross Income Tax -- Interstate Commerce Exemption**

Authority: IC 6-2.1-3-3; Rule 45 IAC 1-1-119(1)(c)

**ISSUE IV: Gross Income Tax -- Interstate Commerce Exemption**

Authority: IC 6-2.1-3-3; Rule 45 IAC 1-1-119(1)(c)

**STATEMENT OF FACTS**

SIA is an Indiana corporation which will engage in the manufacture of motor vehicles at its plant in Indiana. SIA will manufacture both "S" vehicles, "I" vehicles and "I" clone vehicles at its Indiana plant.

SIA will have two wholly owned subsidiaries, SFI and ITI are Indiana corporations. SFI will purchase basic "S" motor vehicles from SIA and arrange the installation of certain accessories. ITI will purchase basic "I" motor vehicles from SIA and will also arrange the installation of certain accessories. SFI and ITI will resell the accessorized vehicles to their customers and will arrange for shipment to the ultimate locations as part of their contractual obligations.

Purchase orders for "S" vehicles will be placed to SFI by SOA, a New Jersey corporation and wholly owned subsidiary of Taxpayer "F". SOA will resell "S" vehicles to "S" dealers located throughout the United States. Purchase orders for "I" vehicles will be placed to ITI by IMAI, a Michigan corporation. IMAI is 100% owned by Taxpayer "I". IMAI will resell the vehicles to AIMI, which, in turn will resell them to "I" dealers located throughout the United States. SOA and IMAI conduct business in Indiana. SOA operates a parts distribution center in Indiana. ITI will also make sales of "I" clone vehicles to IMAI, which resells the vehicles to AHM. IMAI will also export SIA made "I" and "I" clone vehicles to foreign countries.

The terms of sale of the motor vehicles from SIA to SFI and ITI and, in turn, from SFI and ITI to SOA and IMAI, respectively, will be as follows:

First, pursuant to purchase orders, SIA will manufacture vehicles, and title to the vehicles will pass from SIA to SFI and ITI as the vehicles are moved to the motor pool compound by SFI and ITI. SFI will lease from SIA a "S" accessorization plant site and motor pool compound, which will be located within the perimeters of SIA's Indiana plant. ITI will similarly lease from SIA an "I" accessorization plant site and motor pool compound.

Next, pursuant to purchase orders placed to them by SOA and IMAI, SFI and ITI, respectively, will be responsible for transporting or arranging for the transportation of motor vehicles out of the state of Indiana. SFI and ITI will bear the cost of transporting the motor vehicles out of Indiana, either by paying the carrier directly or reimbursing the purchaser for the freight costs. All shipments of motor vehicles will be made by common carriers, normally truck or rail carriers.

SFI and ITI will also sell vehicles to SOA and IMAI, respectively, that are destined for shipment to dealers located within the state of Indiana. Those sales are not involved in this ruling.

To perform certain functions necessary to satisfy their contractual obligations to their respective customers, SFI and ITI will enter into contracts with companies referred to as "yard operators". In connection with "S" vehicles, SFI will contract with a wholly-owned subsidiary of SOA, SYO, to provide both accessories and the expertise and labor needed to install the accessories. Under this contract SYO will also arrange for the shipment of motor vehicles to the dealer destinations specified by SFI at the times specified by SFI. SYO will fulfill this obligation primarily by using common or contract carriers. In addition, SYO will provide certain inspection services to SFI, including performance of a general quality verification upon SFI's acquisition of the vehicles from SIA and subsequent quality verification after the accessorization of the vehicles and before they are delivered to the carrier. SYO will subcontract its accessorization, shipping, and inspection duties to an independent third party subcontractor.

In connection with "I" vehicles, ITI will contract with an independent yard operator (YO) to operate the "I" accessorization plant site and motor pool compound. Under its contract YO will install accessories on basic "I"

motor vehicles in accordance with work orders issued for each vehicle by ITI. Employees of YO will become involved in loading finished vehicles on conveyances provided by carriers selected by ITI. In addition, YO will provide certain inspection services to ITI, including performance of a general quality verification upon ITI's acquisition of the vehicles from SIA and a subsequent quality verification after the accessorization of the vehicles and before they are delivered to the carrier.

The accessorization and shipping activities to be performed by SYO and YO will be carried out on the accessorization plant sites and motor pool compounds leased by SIA to SFI and ITI, respectively.

In connection with ITI's sale of "I" clone vehicles, ITI will contract with an independent company to provide certain inspection services, including performance of a general quality verification upon ITI's acquisition of the vehicle from SIA and a subsequent quality verification after the accessorization of the vehicles and before they are delivered to the carrier. ITI also contracts with an independent company to load the vehicles onto the carrier.

SFI will make sales of certain vehicles to FUSA, a New Jersey corporation and a wholly-owned subsidiary of Taxpayer "F". FUSA purchases such vehicles for export outside the United States. SFI also exports some "S" vehicles directly to Taiwan. As in the case of the sales by SFI to SOA, SFI will be responsible for transporting or arranging transportation of motor vehicles to various destinations outside the state of Indiana. Shipments will be made by common or contract carrier, and SFI will retain title to and risk of loss for the vehicles until they leave the state. SFI will also contract with SYO for the performance of accessorization, shipping, and inspection services in the same manner as the services purposed with respect to sales by SFI to SOA.

The basic arrangement for sales between SFI and SOA have been modified in the case of certain sales to provide a means of financing sales, title to the vehicles passes to and from other entities before being transferred to SOA. In particular, by agreement, SFI will make certain sales destined for dealer locations outside Indiana in which such title will be transferred from SFI to MAC, from MAC to MMS, from MMS to FUSA, and from FUSA to SOA. MAC is a New York corporation, which is registered to do business in Indiana and conducts business in Indiana. MMS is a California corporation. Thus, the flow of legal title is as follows:

SFI = MAC = MMS = FUSA = SOA

As in the case of sales directly to SOA, SFI will be responsible for transporting or arranging shipment of the motor vehicles to various destinations outside Indiana. Shipment will be made by common or contract carrier. SOA will also contract with SYO for the performance of accessorization, shipping, and inspection services in the same manner as the services performed with respect to sales directly from SFI to SOA.

There will be instances in which the "S" and "I" motor vehicles that are ordered by the motor vehicles dealers do not require any accessories beyond what is installed by SIA during the basic manufacturing process. As to these vehicles, the customer purchase order will be complete when SFI or ITI, as the case may be, receives instructions from SOA or IMAI as to the destination of the motor vehicles involved. As with vehicles that require the addition of accessories, SFI and ITI will be responsible for shipping these basic vehicles to the location of the motor vehicle dealers who have ordered them. Vehicles which do not require accessorization are treated the same way as those which do. SFI and ITI will ship them in the same manner, and their scope of responsibility with respect to the vehicles remains the same.

The Department on January 5, 1989 ruled that corporations SIA, SFI and ITI would constitute an affiliated group with all members incorporated in the state of Indiana and therefore entitled to file a consolidated return.

This ruling has been specifically requested by virtue of the fact that Tax Policy Directive #9 dated July, 1995, voids all rulings issued prior to January 1, 1990 effective December 31, 1995.

#### **Issue I -- Gross Income Tax -- Consolidated Filing**

#### **DISCUSSION**

Question: Whether SIA, SFI and ITI are entitled to elect to file a consolidated return under IC 6-2.1-4-6 for Indiana gross income tax purposes?

If the consolidated return is permitted, the consolidated group would be allowed a deduction from gross income of an amount equal to the total purchase price of the basic motor vehicles purchased by SFI and ITI from SIA.

The Indiana Code provides under IC 6-2.1-5-5(a) that:

(a) Corporations are affiliated if at least eighty percent (80%) of the voting stock of one (1) corporation... is owned by the other corporation. Every corporation affiliated with another corporation is affiliated with every corporation that is affiliated with such other corporation. All corporations so affiliated constitute an affiliated group.

Indiana Code, 6-2.1-5-5(b) provides that:

(b) Corporate members of an affiliated group that are incorporated in the state of Indiana or are authorized to do business in the state of Indiana may file a consolidated gross income tax return.

The facts presented bring SIA, SFI and ITI within the purview of the statutes for purposes of filing a consolidated

return. All three corporations will be incorporated in Indiana and will constitute an affiliated group because SFI and ITI are wholly owned subsidiaries of SIA.

Indiana Code, 6-2.1-4-6(a), provides that:

(a)... each taxable year an affiliated group of corporations filing a consolidated return pursuant to IC 6-2.1-5-5 is entitled to a deduction from the gross income reported on such a return. The amount of the deduction equals the total amount of gross income received during the taxable year from transactions between members of the group that are incorporated....

Thus, if a consolidated return is filed, the gross income from the sale of motor vehicles between SIA and SFI or ITI will be deductible in computing taxable gross income on such return.

Indiana code, 6-2.1-4-6(b) and (c), indicate the deduction provided in section (a) is not allowed for gross income derived from sources outside Indiana or from distributions attributable to the dissolution of a member. Such income may be deductible for another reason, such as interstate commerce.

#### **RULING**

The Department rules that SIA, SFI and ITI will be an affiliated group with all members incorporated in the state of Indiana and are therefore entitled to file a consolidated return. If an election is made to file the consolidated return the gross income from the motor vehicle sale transactions between SIA and SFI and ITI will be deductible in computing taxable gross income for such return.

#### **Issue II-- Gross Income Tax -- Nonresidents**

#### **DISCUSSION**

Question: Whether IMAI and SOA are "nonresidents" for Indiana gross income tax purposes?

Counsel points out that gross income tax regulations 45 IAC 1-1-119 and 1-1-120 apply different rules in certain instances depending on whether the buyer is a "resident" or "non-resident" of Indiana. Counsel urges the Department to define the term "nonresident" to mean a corporation that is not incorporated in Indiana, citing "It is well settled that a corporation is a resident of its state of incorporation". Department of State Revenue v. Mercantile Mortgage Co., 412 N.E.2d 1252 (Ind. App. 1980).

IC 6-2.1-2-2 indicates that an income tax, known as the gross income tax, is imposed upon the receipt of:

- (1) the entire taxable gross income of taxpayer who is a resident or a domiciliary of Indiana; and
- (2) the taxable gross income derived from activities or businesses or any other source within Indiana by a taxpayer who is not a resident or domiciliary of Indiana. (emphasis added)

The gross income tax imposition statute as cited above uses the words "not a resident or domiciliary" of Indiana. A literal reading of the statute would indicate that the term non-resident would mean either a taxpayer who is not incorporated in Indiana or who is not commercially domiciled in Indiana. Likewise, a resident would be either a corporation who is incorporated in Indiana or who is commercially domiciled in Indiana.

#### **RULING**

The facts establish that SOA and IMAI are not incorporated in Indiana. SOA is incorporated in New Jersey and IMAI is incorporated in Michigan. According to information provided by counsel, neither SOA nor IMAI is commercially domiciled in Indiana. The Department rules that SOA and IMAI are nonresidents of Indiana for Indiana gross income tax purposes.

#### **Issue III -- Gross Income Tax -- Interstate Commerce Exemption**

#### **DISCUSSION**

Question: Whether sales by SFI to SOA and by ITI to IMAI, which culminate in shipments to dealers or other purchasers outside the state of Indiana, will be subject to Indiana gross income tax because of the exemption for interstate commerce under Indiana Code, § 6-2.1-3-3?

Indiana Code, § 6-2.1-3-3, provides an exemption from gross income tax for income derived from business conducted in interstate commerce to the extent that the state is prohibited from taxing such income by the Constitution. In this connection, Rule 45 IAC 1-1-119(1)(c) recognizes that the following transactions are nontaxable out shipments for purposes of the interstate commerce exemption:

© Sales to nonresidents where the seller is required under the contract to ship the goods to the buyer's nonresident customer.

SFI is required, under its contract with SOA, to ship finished "S" motor vehicles to the "S" dealers who have ordered them throughout the United States. Likewise, ITI is required, under contract with IMAI, to ship finished "I" motor vehicles to the "I" dealers who have ordered them throughout the United States. The facts in this case establish that shipment will be made by common or contract carrier. Sales by SFI to SOA and sales by ITI to IMAI, which culminate in shipment of motor vehicles to "S" and "I" dealers outside Indiana, should be exempt from gross income tax under the interstate commerce rules recognized by Rule 45 IAC 1-1-119(1)(c).

#### **RULING**

The Department rules that sales by SFI to SOA and by ITI to IMAI which culminate in shipment to dealers outside the state of Indiana via common or contract carrier will not be subject to gross income tax as a result of the exemption for interstate commerce under IC 6-2.1-3-3.

**Issue IV -- Gross Income Tax -- Interstate Commerce Exemption**

**DISCUSSION**

Question: Whether sales to SFI by FUSA and to MAC, which culminate in shipments to dealers or other purchasers outside the state of Indiana will be subject to Indiana gross income tax because of the exemption for interstate commerce under Indiana Code § 6-2.1-3-3?

SFI will also make sales of certain vehicles to FUSA. FUSA purchases such vehicles for export outside the United States. SFI is required under its contract with FUSA and under its separate contracts with MAC, MMS, FUSA, and SOA to ship finished motor vehicles to dealers who order them at locations outside Indiana. Shipment will be made by common or contract carrier. Indiana Code, 6-2.1-3-3, provides an exemption from gross income tax for income derived from business conducted in interstate commerce to the extent that the state is prohibited from taxing such income by the Constitution. In this connection, Rule 45 IAC 1-1-119(1)(c) recognizes that the following transactions are nontaxable out shipments for purposes of the interstate commerce exemption:

© Sales to nonresidents where the seller is required under the contract to ship the goods to the buyer's nonresident customer.

Thus, sales to FUSA or MAC which culminate in shipment of motor vehicles outside Indiana should be exempt under the interstate commerce rules recognized by IC 6-2.1-3-3 and Rule 45 IAC 1-1-119(1)(c).

**RULING**

The Department rules that sales by SFI to FUSA and MAC which culminate in shipment of motor vehicles outside the state of Indiana via common or contract carrier will be exempt from gross income tax pursuant to the provisions of Rule 45 IAC 1-1-119(1)(c).

**REVISED REGULATIONS**

SIA requests the Department confirm the application of "proposed" gross income tax regulation, 45 IAC 1.1-3-3(c) to sales by SFI to SOA, FUSA, or MAC and sales by ITI to IMAI. Specifically, taxpayer requests advice as to whether sales which are culminated by shipment via common or contract carrier to dealers located outside of Indiana will continue to be exempt from gross income tax.

In this instance, the taxpayer is asking a question dealing with a regulation that has not been duly promulgated. Legislative rules and regulations generally are effective from their promulgation until modification or repeal by agency or legislature and have no retroactive effect. See Van Allen v. State, 467 N.E.2d 1210 (Ind. App. 2Dist 1984).

**RULING**

The Department cannot make a ruling based on a proposed regulation as the regulations are not retroactive and cannot be relied upon until duly promulgated.

**CAVEAT**

This Ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE